

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 19 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROBERT GARBER,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

No. 17-55296

D.C. No. 2:15-cv-05867-CAS-JPR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Submitted January 16, 2018**

Before: REINHARDT, TROTT, and HURWITZ, Circuit Judges.

Robert Garber appeals pro se from the district court's summary judgment in his Federal Tort Claims Act ("FTCA") action alleging dental malpractice. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Landreth v. United States*, 850 F.2d 532, 534 (9th Cir. 1988), and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The district court properly granted summary judgment on Garber's FTCA claim because Garber failed to adduce expert testimony and therefore failed to establish a genuine dispute of material fact as to the elements of his medical malpractice claim. *See Johnson v. Superior Court*, 49 Cal. Rptr. 3d 52, 58 (Ct. App. 2006) (setting forth elements of medical malpractice claim under California law); *Bushling v. Fremont Med. Ctr.*, 11 Cal. Rptr. 3d 653, 664 (Ct. App. 2004) (“[W]here the conduct required of a medical professional is not within the common knowledge of laymen, a plaintiff must present expert witness testimony to prove a breach of the standard of care. Plaintiff also must show that defendants’ breach of the standard of care was the cause, within a reasonable medical probability, of his injury.” (citations omitted)); *see also Hutchinson v. United States*, 838 F.2d 390, 393 (9th Cir. 1988) (when applying California medical malpractice law under the FTCA, “when the defendant supports his motion for summary judgment with the declarations of experts, a plaintiff who has presented no expert evidence concerning the required standard of care has failed to make a sufficient showing that there are genuine factual issues for trial”).

AFFIRMED.